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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
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13 DAVID F. MICKELSON,

14 Plaintiff,

15 v.

16 AMERICAN INTERNATIONAL
17 GROUP, INC., *et al.*,

18 Defendants.
19

Case No. 13-cv-2754-W (BLM)

**ORDER REMANDING ACTION
TO STATE COURT FOR LACK
OF SUBJECT MATTER
JURISDICTION**

20 On October 15, 2013, Plaintiff David F. Mickelson commenced this action in
21 Superior Court for the State of California for the County of San Diego against
22 Defendant American International Group ("AIG"), doing business as American
23 General Life Insurance Company ("American General"). In the complaint, Plaintiff
24 asserts two causes of action arising from a judgment entered in United States District
25 Court for the Southern District of Texas and a payment plan agreed upon to satisfy that
26 judgment. Thereafter, American General removed this action to this Court. The
27 notice of removal is based on diversity jurisdiction under 28 U.S.C. §§ 1332, 1441, and
28 1446.

For the following reasons, the Court finds that American General's Notice of Removal is facially deficient and **REMANDS** this action to the San Diego Superior Court.

I. LEGAL STANDARD

"Federal courts are courts of limited jurisdiction." Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994). "They possess only that power authorized by Constitution or a statute, which is not to be expanded by judicial decree." Id. (internal citations omitted). "It is to be presumed that a cause lies outside this limited jurisdiction and the burden of establishing the contrary rests upon the party asserting jurisdiction." Id. (internal citations omitted); see also Abrego Abrego v. The Dow Chem. Co., 443 F.3d 676, 684 (9th Cir. 2006).

Consistent with the limited jurisdiction of federal courts, the removal statute is strictly construed against removal jurisdiction. Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992); see also Sygenta Crop Prot. v. Henson, 537 U.S. 28, 32 (2002); O'Halloran v. Univ. of Wash., 856 F.2d 1375, 1380 (9th Cir. 1988). "The strong presumption against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper." Gaus, 980 F.2d at 566; see also Nishimoto v. Federman-Bachrach & Assoc., 903 F.2d 709, 712 n.3 (9th Cir. 1990); O'Halloran, 856 F.2d at 1380. "Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance." Gaus, 980 F.2d at 566.

Although there has not been a request to remand, it is well-established that "a district court's duty to establish subject matter jurisdiction is not contingent upon the parties' arguments." See United Investors Life Ins. Co. v. Waddell & Reed Inc., 360 F.3d 960, 966 (9th Cir. 2004). Courts may consider the issue *sua sponte*. Demery v. Kupperman, 735 F.2d 1139, 1149 n.8 (9th Cir. 1984). Indeed, the Supreme Court has emphasized that "district courts have an 'independent obligation to address subject-matter jurisdiction *sua sponte*.'" Grupo Dataflux v. Atlas Global Grp., L.P., 541 U.S.

1 567, 593 (2004) (quoting United States v. S. Cal. Edison Co., 300 F. Supp. 2d 964, 972
2 (E.D. Cal. 2004)).

3 4 **II. ANALYSIS**

5 In attempting to invoke this Court's diversity jurisdiction, the defendant must
6 prove that there is complete diversity of citizenship between the parties and that the
7 amount in controversy exceeds \$75,000. 28 U.S.C. § 1332. To determine whether the
8 amount in controversy has been met on removal, "[t]he district court may consider
9 whether it is 'facially apparent' from the complaint that the jurisdictional amount is in
10 controversy." Singer v. State Farm Mutual Auto Ins. Co., 116 F.3d 373, 377 (9th Cir.
11 1997). In cases in which the plaintiff's state-court complaint does not specify an exact
12 damage figure, the defendant "must provide evidence that it is 'more likely than not'
13 that the amount in controversy" satisfies the federal diversity jurisdictional amount
14 requirement. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 404 (9th Cir. 1996).
15 American General fails to satisfy that requirement. See 42 U.S.C. § 1332.

16 First, American General asserts that "Mr. Mickelson's Complaint plainly requests
17 the Court enter a judicial decree that American general be required to return
18 \$40,724.36 to Mr. Mickelson *in addition* 'to the \$40,000' Mr. Mickelson agreed to pay
19 American General" in the payment plan. (Removal Notice ¶ 10 (emphasis in
20 original).) This contention is simply not consistent with the damages sought in the
21 complaint.

22 Mr. Mickelson's prayer for relief seeks "damages in a sum to be determined at
23 trial, but in no event less than \$40,724.36." (Compl. 10:4–16.) He further alleges that
24 "[t]he amount of \$40,764.36 reflects the difference between the total amount received
25 by AIG from Mickelson (\$80,764.36), *less* the amount that Mickelson had contracted
26 to pay AIG in satisfaction of the Final Judgment (\$40,000.00)." (Compl. ¶ 36
27 (emphasis added).)

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1 Nowhere in the complaint does Mr. Mickelson seek an award of the \$40,000 that
 2 he explicitly contends constitute his obligations to American General under the
 3 payment plan. (Compl. 10:13–14.) On the contrary, he “seeks declaratory relief that
 4 the parties’ rights and obligations *are* dictated by the Payment Plan Agreement,” under
 5 which he agreed to pay American General a sum of \$40,000. (Compl. ¶¶ 41–42
 6 (emphasis added).) Mr. Mickelson seeks the amount that American General allegedly
 7 collected in excess of that agreement from commissions administered by Crump Life
 8 Insurance Services from policies not issued through American General. (Compl. ¶¶ 9,
 9 12–13, 21, 48.) In sum, American General’s attempt to add the \$40,000 allegedly
 10 agreed upon in the payment plan to the amount in controversy is inaccurate and
 11 inappropriate.

12 American General makes two further contentions in support of removal: (1) Mr.
 13 Mickelson seeks reasonable cost of suit; and (2) he seeks punitive damages according
 14 to proof. (Removal Notice ¶ 10.)

15 Attorneys’ fees are not part of the amount in controversy in this case.

16 When the applicable substantive law makes the award of an
 17 attorney’s fee discretionary, a claim that this discretion
 18 should be exercised in favor of plaintiff makes the requested
 19 fee part of the amount in controversy. But when there is no
 direct legal authority for an attorney’s fee, a request for a fee
 cannot be included in the computation or the jurisdictional
 amount.

20 Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1155 (9th Cir. 1998) (internal quotation
 21 marks omitted). Mr. Mickelson fails to identify any direct legal authority authorizing
 22 his request for attorneys’ fees. Consequently, a request for such fees is not included in
 23 the calculation to determine the amount in controversy. See id.

24 American General also fails to show that the possibility of Mr. Mickelson proving
 25 punitive damages at trial makes it more likely than not that the amount in controversy
 26 exceeds \$75,000. See 28 U.S.C. § 1332; Sanchez, 102 F.3d at 404. “It is well
 27 established that punitive damages are part of the amount in controversy in a civil
 28 action.” Gibson v. Chrysler Corp., 261 F.3d 927, 945 (9th Cir. 2001), *holding modified*

1 by Exxon Mobil Corp. v. Allapattah Servs., Inc., 545 U.S. 546 (2005). Mr. Mickelson
2 seeks compensation for at least the amount of \$40,724.36, but he does not state a
3 monetary figure for punitive damages, interest, or any possible future increase in the
4 amount of compensatory damages sought. (See Compl. ¶ 36.) These figures are all
5 unknown.

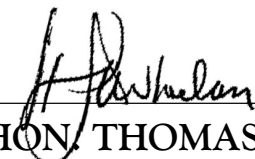
6 In order for the total amount in controversy to exceed \$75,000, American
7 General must show that it is more likely than not that the total of punitive damages,
8 interest, and any increase in the amount of compensatory damages at trial add to at
9 least \$34,275.65. See id.; Sanchez, 102 F.3d at 404. It fails to do so. American
10 General's conclusory assertion that "the Complaint makes clear Mr. Mickelson seeks
11 a judgment against American General in excess of the jurisdictional amount" is
12 insufficient. Because there is doubt as to the right of removal, federal jurisdiction must
13 be rejected. See Gaus, 980 F.2d at 566.

14 15 **III. CONCLUSION & ORDER**

16 American General fails to provide an adequate explanation supported by
17 evidence that the amount in controversy exceeds the jurisdictional threshold.
18 Therefore, the Court **REMANDS** this action to the San Diego Superior Court. See 28
19 U.S.C. § 1447(c) ("If at any time before final judgment it appears that the district court
20 lacks subject matter jurisdiction, the case shall be remanded.").

21 **IT IS SO ORDERED.**

22
23 **DATE: February 3, 2014**

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25 
26 **HON. THOMAS J. WHELAN**
27 United States District Court
28 Southern District of California